

IN THE MATTER OF	:	BEFORE THE
DOROTHY VERMILLION	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-052V

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DECISION AND ORDER

On December 8, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Dorothy Vermillion for a variance to reduce the 50-foot setback from a public street right-of way ("ROW") to 40 feet to enclose an existing attached carport for a garage addition, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Dorothy Vermillion and John Vermillion testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated at the southwest corner of the Anfred Road intersection with Gorman Road. It is located in the 6th Election District, is identified on Tax

Map 41, Grid 24, as Parcel 342, Lot 2, and is also known as 7902 Anfred Road (the "Property").

2. The corner Property is a generally rectangular-shaped lot located in an R-20 (Residential: Single) zoning district. It is 23,958 square feet in area. It is improved by a one-story, single-family dwelling situated at an angle to the intersection. The house is about 27 feet deep and 45 feet wide. The original adjoining one-car carport on the north side of the house is 26 feet wide and 32 feet deep. The front section is located 40 feet at its closest point to Gorman Road. The dwelling and carport are accessed from a paved driveway off Anfred Drive near Gorman Road. The dwelling appears to have been built in the early 1970s, based on my site visit.

3. Adjacent properties are also zoned R-20 and improved with single-family detached dwellings. Many have carports and several carports appeared to have been enclosed as garage additions.

4. The Petitioner, the Property owner, is requesting a 10-foot variance from the 50-foot public street right-of way ("ROW") to enclose an existing attached carport for a garage addition.

5. Ms. Vermillion testified the carport was there when she purchased the property. She also stated that her disabled husband must undergo dialysis several days a week and has fallen several times on the ice getting to the car.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations

are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when

the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, the existing carport is physically integrated with the house and original to it, and it is partially situated within the required 50-foot setback area. As such, the carport is a noncomplying structure and therefore constitutes a unique physical condition of the Property.

Consequently, I find that the location of the carport is a unique physical condition that causes the Petitioner practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed garage addition will be used for a permitted purpose and will not change the nature or intensity of use, there being many two-car garages and carports converted to garage additions in the neighborhood. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the location of the noncomplying structure on the lot, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed garage addition is of the same design and scale as the house. It will not encroach into the setback more than the existing carport. Within the intent and

purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 10th day of December 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Dorothy Vermillion for a variance to reduce the required 50-foot setback from a public street right-of way ("ROW") to 40 feet to enclose an existing attached carport for a garage addition in an R-20 zoning district is **GRANTED**.

Provided, however, that:

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 12/11/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.